IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 1090 of 2006.

Date of Decision: May 29, 2007

Vipul Verma … Petitioner.

versus.

Union of India & ors . …Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.
The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?

For the Petitioner(s): Mr. P.P.Chauhan, Advocate.

For the Respondents) Mr. Y.P.S.Dhaulta, Central Government Counsel.

Deepak Gupta, J (Oral)

The petitioner was selected as Postal Assistant by the Department of Posts for being appointed in the Army Postal Service. His appointment was, however, subject to medical examination by the military authorities. The petitioner appeared before the military authorities and was found to be unfit. The petitioner has prayed that the orders whereby he was declared to be unfit be set aside and he be re-examined by the military medical officer of the Command Hospital or the report of the civil doctor which he has obtained may be accepted.

The respondents have contested the writ petition. The facts as they emerged from the pleadings are that the petitioner appeared before the Recruiting Medical Officer at Ambala Cantt. on 20.2.2006. He was declared medically unfit

by the Recruiting Medical Officer on the ground that he was suffering from "Scoliosis".

As per instructions issued by the Army authorities from time to time, his case was referred to the Medical Specialist and he appeared before the Medical Specialist on 1.3.2006. The Medical Specialist also came to the conclusion that the petitioner is suffering from "Scoliosis Lumbar Spine" and that he is surgically unfit to hold the post.

The petitioner in the writ petition has not mentioned anything about the fact that he was sent to the Medical Specialist for examination. According to the petitioner, he was not informed of the reason for declaring him unfit. It is clear that the petitioner has tried to mislead this Court and has not come to Court with clean hands. The petitioner did not bring to the notice of this Court the fact that the Recruiting Officer had first found him unfit due to "Scoliosis". The averment of the petitioner that he was not informed of the same appears to be absolutely incorrect as immediately thereafter on 23.2.2006, the petitioner obtained a certificate Annexure P-5 from the Medical Department, H.P. to show that on X-ray of the spine, no problem was found. If the petitioner was unaware as to what was the ground on which he had been found unfit then what was the need for him to approach the medical authorities at Himachal for the said certificate. Therefore, the version of the petitioner that no reason was assigned is patently wrong.

Another fact which goes against the petitioner is that he has not made a whisper in the petition that on 20.2.2006, he was examined by the Recruiting Medical Officer who on finding him unfit referred him to the Medical Specialist.

A perusal of the Form Annexure R1/B filed by the respondents clearly shows that the petitioner was found unfit by the Recruiting Medical Officer on 20.2.2006 and was advised to report to the Recruiting Cell, Military Hospital, Ambala Cantt on 1.3.2006. The petitioner has appended his specimen signatures

at three places and thereafter admittedly appeared before the Medical Specialist on 1.3.2006 who again found him medically unfit.

Keeping in view the aforesaid facts, we are of the view that we cannot rely upon the certificate issued by the civil doctor to over-rule the findings given by the Army doctors. The level of physical fitness required in the Army is much higher and it is not clear as to in what circumstances the report Annexure P5 was obtained.

Mr. P.P.Chauhan has strenuously contended that this Court may direct that the petitioner should be got examined by some other medical board in the Command Hospital. We are afraid that this prayer of the petitioner cannot be considered keeping in view his conduct. The petitioner has suppressed the material facts and in fact tried to mislead the Court. Such a petitioner is not entitled to any discretionary relief.

In view of the above discussion, the petition is without any merit and the same is accordingly dismissed with no order as to costs.

(Deepak Gupta), J.

May 29, 2007. (Surinder Singh), J.
s.